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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bill was introduced in Lok Sabha on the 11th August 1972:—

BILL NO. 72 OF 1972

A Bill further to amend the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956 and the Monopolies and Restrictive Trade Practices Act, 1969.

BE it enacted by Parliament in the Twenty-third Year of the Republic of India as follows:—

1. This Act may be called the Companies (Amendment) Act, 1972. Short title.

1 of 1956. 2. In the Companies Act, 1956 (hereinafter referred to as the principal Act), in section 2,— Amendment of section 2.

(*i*) after clause (*18*), the following clause shall be inserted, namely:—

'(*18A*) "group" means a group of two or more individuals, associations, firms or bodies corporate, or any combination thereof, which exercises, or has the object of exercising, control over any body corporate, firm or trust;';

(*ii*) to clause (25), the following *Explasations* shall be added, namely:—

'*Explanation I.*—For the purposes of this Act, references to "managing agent" shall be constructed as references to any indivi-

dual, firm, or body corporate who, or which, was, at any time before the 3rd day of April, 1970, the managing agent of any company.

Explanation II.—For the removal of doubts, it is hereby declared that notwithstanding anything contained in section 6 of the Companies (Amendment) Act, 1969, this clause shall remain, and shall be deemed always to have remained, in force;'; 17 of 1969.

(*iii*) in clause (*30*), sub-clause (*c*) shall be omitted;

(*iv*) in clause (*36*), after the words "other document", the words "inviting deposits from the public or" shall be inserted;

(*v*) after clause (*41*), the following clause shall be inserted, namely:—

'(*41A*) "same management" has the meaning assigned to it in section 4 B;';

(*vi*) to clause (*44*), the following *Explanations* shall be added, namely:—

'*Explanation I.*—For the purposes of this Act, references to "secretaries and treasurers" shall be construed as references to any firm or body corporate which was, at any time before the 3rd day of April, 1970, secretaries and treasurers of any company.

Explanation II.—For the removal of doubts, it is hereby declared that notwithstanding anything contained in section 6 of the Companies (Amendment) Act, 1969 this clause shall remain, and shall be deemed always to have remained, in force;'; 17 of 1969.

(*vii*) in clause (45),—

(*a*) for the words "any individual, firm or body corporate", the words "any individual" shall be substituted;

(*b*) for the words "purely ministerial or administrative duties;", the words "ministerial or administrative duties, if such individual possesses such qualifications as may be prescribed;" shall be substituted.

Insertion of new sections 4A and 4B.

3. After section 4 of the principal Act, the following sections shall be inserted, namely:—

Public financial institutions.

"4A. (*1*) Each of the financial institutions specified in this sub-section shall be regarded, for the purposes of this Act, as a public financial institution, namely:—

(*i*) the Industrial Credit and Investment Corporation of India, a company formed and registered under the Indian Companies Act, 1913; 7 of 1913.

(*ii*) the Industrial Finance Corporation of India, established under section 3 of the Industrial Finance Corporation Act, 1948; 15 of 1948.

(*iii*) the Industrial Development Bank of India, established under section 3 of the Industrial Development Bank of India Act, 1964; 18 of 1964.

(*iv*) the Life Insurance Corporation of India, established under section 3 of the Life Insurance Corporation Act, 1956;

31 of 1956.

(*v*) the Unit Trust of India, established under section 3 of the Unit Trust of India Act, 1963.

52 of 1963.

(2) Subject to the provisions of sub-section (*1*), the Central Government may, by notification in the Official Gazette, specify such other institution as it may think fit to be a public financial institution:

Provided that no such institution shall be so specified unless—

(*i*) it has been established or constituted under any Central Act, or

(*ii*) not less than fifty-one per cent. of the paid-up share capital of such institution is held or controlled by the Central Government.

Meaning of same management.

4B. (*1*) For the purposes of this Act, two bodies corporate shall be deemed to be under the same management—

(*i*) if one exercises control over the other or both are under the control of the same group or any of the constituents of the same group; or

(*ii*) if the managing director or manager of the one is the managing director or manager of the other; or

(*iii*) if one holds not less than one-third of the shares (whether equity or preference or partly equity and partly preference) in the other or controls the composition of not less than one third of the total membership of the Board of directors of the other; or

(*iv*) if one or more directors of one body corporate constitute, or at any time within a period of six months immediately preceding the day when the question arises as to whether such bodies corporate are under the same management, constituted (whether independently or together with relatives) one-third of the directors of the other; or

(*v*) if the same individual or individuals belonging to a group while holding, whether by themselves or together with their relatives, not less than one-third of the shares (whether equity or preference or partly equity and partly preference) in one body corporate also hold, whether by themselves or together with their relatives, not less than one-third of the shares (whether equity or preference or partly equity and partly preference) in the other; or

(*vi*) if the same body corporate or bodies corporate belonging to a group holding not less than one-third of the shares (whether equity or preference or partly equity and partly preference) in one body corporate also hold not less than one-third of the shares (whether equity or preference or partly equity and partly preference) in the other; or

(*vii*) if not less than one-third of the total voting power with respect to any matter relating to each of the two bodies corporate is exercised or controlled by the same individual, whether independently or together with relatives, or by the same body corporate whether independently or together with its subsidiaries; or

(*viii*) if not less than one-third of the total voting power with respect to any matter relating to each of the two bodies corporate is exercised or controlled by the same individuals belonging to a group or by the same bodies corporate belonging to a group, or jointly by such individual or individuals and one or more of such bodies corporate; or

(*ix*) if the directors of the one are accustomed to act in accordance with the directions or instructions of one or more of the directors of the other, or if the directors of both the bodies corporate are accustomed to act in accordance with the directions or instructions of any individual, whether belonging to a group or not.

(*2*) If a group exercises control over a body corporate, that body corporate and every other body corporate, which is a constituent of, or controlled by, the group shall be deemed to be under the same management.

(*3*) If two or more bodies corporate under the same management hold, in the aggregate, not less than one-third share capital (whether equity or preference or partly equity and partly preference) in any other body corporate, such other body corporate shall be deemed to be under the same management as the first mentioned bodies corporate.".

Amendment of sections 17, 18 and 19.

4. (*1*) In sections 17, 18 and 19 of the principal Act, for the word "Court", wherever it occurs, the words "Central Government" shall be substituted.

(*2*) Nothing contained in sub-section (*1*) shall apply to any proceedings under section 17 or under sub-section (4) of section 18 which is pending at the commencement of the Companies (Amendment) Act, 1972, before any Court or to any alteration of the memorandum of a company which has been confirmed, before such commencement by any Court.

Amendment of section 43A.

5. In section 43A of the principal Act,—

(*i*) in sub-section (*1*), for the portion beginning with "(*1*) Save as otherwise provided" and ending with "become by virtue of this section a public company:", the following shall be substituted, namely:—

"(*1*) **Save as otherwise provided in this sub-section, where—**

(*a*) **not less than ten per cent. of the paid-up share capital of a private company, having a share capital, is held by one or more bodies corporate, or**

(*b*) **the paid-up share capital of a private company, having a share capital, whether in existence at the commencement of the Companies (Amendment) Act, 1972, or incorporated thereafter, is not less than rupees twenty-five lakhs and the turn over of such company is not less than rupees**

fifty lakhs, the first day, after such commencement, when the company has the said paid-up share capital and turn over,

the private company shall, on and from the first day, after the commencement of the Companies (Amendment) Act, 1972, on which—

(*i*) the aforesaid percentage of the paid-up share capital is first held by such body corporate or bodies corporate, or

(*ii*) the aforesaid share capital and turnover was first held by it,

become by virtue of this section, a public company.";

(*ii*) after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) Where not less than ten per cent. of the paid-up share capital of a public company, having share capital, is held by a private company, the private company shall,—

(*a*) on and from the date on which the aforesaid percentage is first held by it after the commencement of the Companies (Amendment) Act, 1972, or

(*b*) where the aforesaid percentage has been first so held before the commencement of the Companies (Amendment) Act, 1972, on and from the expiry of the period of three months from the date of such commencement, unless within that period the aforesaid percentage is reduced below ten per cent. of the paid-up share capital of the public company,

become, by virtue of this section, a public company, and thereupon all other provisions of this section shall apply thereto.";

(*iii*) sub-sections (6) and (7) shall be omitted;

(*iv*) in sub-section (*8*),—

(*a*) in clause (*a*), for the words "twenty-five per cent.", the words "ten per cent." shall be substituted;

(*b*) for clause (*b*), the following clause shall be substituted, namely:—

"(*b*) that the private company has not held more than ten per cent. of the paid-up share capital of a public company since the date of the annual general meeting with reference to which the last annual return was submitted, or, in the case of the first annual return, since the date of the incorporation of the private company."

6. After section 58 of the principal Act, the following sections shall be inserted, namely:— Insertion of new sections 58A and 58B.

"58A. (*1*) The Central Government may, in consultation with the Reserve Bank of India, prescribe the limits up to which, the Deposits not

to be invited or accepted without issuing an advertisement.

manner in which and the conditions subject to which deposits may be invited or accepted by a company either from the public or from its members.

(2) No company shall invite or accept or allow any other person to invite or accept, or cause to be invited or accepted, on its behalf, any deposit unless—

(*a*) such deposit is invited or accepted or is caused to be invited or accepted in accordance with the rules made under sub-section (*1*), and

(*b*) the company has issued an advertisement, in such form and in such manner as may be prescribed, including therein a statement showing the financial position of the company.

(*3*) (*a*) If any deposit had been accepted by a company at any time before the commencement of the Companies (Amendment) Act, 1972, which, if the rules made under sub-section (*1*) and, so much of the provisions of sub-section (*2*) as do not relate to advertisement, had been in force at the time when the deposit was accepted, could not have been accepted by the company, or

(*b*) where any deposit is accepted by a company after the commencement of the Companies (Amendment) Act, 1972 in contravention of the rules made under sub-section (*1*) or in contravention of the provisions of sub-section (*2*),

the company shall,—

(*i*) within thirty days from such commencement or from the date of acceptance of such deposit, or

(*ii*) within such further time as the Central Government may, by general order, or where no such order has been made, on sufficient cause being shown, allow,

whichever is later, refund the amount of the deposit to the person from whom the deposit was accepted by it and in the case of a deposit accepted by the company after such commencement in contravention of the rules made under sub-section (*1*), or in contravention of the provisions of sub-section (*2*), every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine which shall not be less than the amount of the deposit.

(*4*) Where a company omits or fails to make the refund referred to in sub-section (*3*),—

(*a*) the company shall be punishable with fine which shall not be less than twice the amount of the deposit and out of the said fine, if realised, an amount equal to the amount of the deposit shall be refunded by the Court trying the offence to the person from whom the deposit was accepted, and

(*b*) every officer of the company, who is in default, shall be punishable with fine which shall not be less than five hundred rupees for every day, after the expiry of the period specified in sub-section (*3*), during which the omission or failure to refund the amount of the deposit continues.

(5) Nothing contained in this section shall apply to,—

(*a*) a banking company, or

(*b*) such other company as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf.

Explanation.—For the purposes of this section, "deposit" means any deposit of money with, and includes any amount borrowed by, a company but shall not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India.

Provisions relating to prospectus to apply to advertisement.

58B. Except where the provisions of this Act relating to prospectus are inconsistent with the rules made under section 58A, the provisions of this Act relating to prospectus shall apply to an advertisement referred to in the said section 58A.'.

Amendment of section 73.

7. In section 73 of the principal Act,—

(*i*) for sub-section (*1*), the following sub-section shall be substituted, namely:—

"(*1*) Where a prospectus, whether issued generally or not, states that an application has been, or will be made, for permission for the shares or debentures offered thereby to be dealt with in one or more recognized stock exchanges, such prospectus shall state the name of the stock exchange or, as the case may be, each such stock exchange, and any allotment made on an application in pursuance of such prospectus shall, whenever made, be void if the permission has not been applied for before the tenth day after the first issue of the prospectus, or, where such permission has been applied for before that day, if the permission has not been granted by the stock exchange or each such stock exchange, as the case may be, before the expiry of ten weeks from the date of the closing of the subscription lists:

Provided that where an appeal against the decision of any recognized stock exchange refusing permission for the shares or debentures to be dealt with on that stock exchange has been preferred under section 22 of the Securities Contracts (Regulation) Act, 1956, such allotment shall not be void until the dismissal of the appeal.";

(*ii*) in sub-section (*2*), for the words "or has not been granted as aforesaid", the words "or, such permission having been applied for, has not been granted as aforesaid" shall be substituted;

(*iii*) for sub-section (5), the following sub-section shall be substituted, namely:—

"(5) For the purposes of this section, it shall be deemed that permission has not been granted if the application for permission, where made, has not been disposed of within the time specified in sub-section (1).".

Amendment of section 79.

8. (*1*) In section 79 of the principal Act,—

(*i*) in sub-sections (*2*) and (*3*), for the word "Court", wherever it occurs, the words "Central Government" shall be substituted;

(*ii*) in sub-section (*2*),—

(*a*) in clause (*ii*), the words and brackets "(not exceeding ten per cent. or such higher percentage as the Central Government may permit in any special case)" shall be omitted;

(*b*) to clause (*ii*), the following proviso shall be added, namely:—

"Provided that no such resolution shall be sanctioned by the Central Government if the maximum rate of discount specified in the resolution exceeds ten per cent., unless the Central Government is of opinion that a higher percentage of discount may be allowed in the special circumstances of the case;".

(*2*) Nothing contained in sub-section (*1*) shall affect any issue of shares at a discount which has been sanctioned by the Court or any proceeding relating to such sanction which is pending before the Court at the commencement of the Companies (Amendment) Act, 1972.

Insertion of new section 94A.

9. After section 94 of the principal Act, the following section shall be inserted, namely:—

Share capital to stand increased where an order is made under section 81(4).

"94A. (*1*) Notwithstanding anything contained in this Act, where the Central Government has, by an order made under sub-section (*4*) of section 81, directed that any debenture or loan or any part thereof shall be converted into shares in a company, the conditions contained in the memorandum of such company shall, where such order has the effect of increasing the nominal share capital of the company, stand altered and the nominal share capital of such company shall stand increased by an amount equal to the amount of the value of the shares into which such debentures or loans or part thereof has been converted.

(*2*) Where, in pursuance of an option attached to debentures issued or loans raised by the company, any public financial institution has converted such debentures or loans into shares in the company, the Central Government may, on the application of such public financial institution, direct that the conditions contained in the memorandum of such company shall stand altered and the nominal share capital of such company shall stand increased by an amount equal to the amount of the value of the shares into which such debentures or loans or part thereof has been converted.

(*3*) Where the memorandum of a company becomes altered, whether by reason of an order made by the Central Government under sub-section (*4*) of section 81 or sub-section (*2*) of this section, the Central Government shall send a copy of such order to the Registrar who shall, on receipt of such order, carry out the necessary alterations in the memorandum of the company."

10. After section 108 of the principal Act, the following sections shall be inserted, namely:— Insertion of new sections 108A to 108G.

"108A. (*1*) Except with the previous approval of the Central Government, no individual, group, constituent or a group, firm, body corporate, or bodies corporate under the same management, shall jointly or severally acquire or agree to acquire, whether in his or its own name or in the name of any other person, any equity shares in a public company, the total paid-up capital of which is not less than rupees twenty-five lakhs, or a private company which is a subsidiary of such a public company, if the total nominal value of the equity shares intended to be so acquired exceeds, or would, together with the total nominal value of any equity share already held in the company by such individual, firm, group, constituent of a group, body corporate, or bodies corporate under the same management, exceed twenty-five per cent of the paid-up equity share capital of such company. Restriction on the acquisition of shares.

(*2*) Any person who acquires any share in contravention of the provisions of sub-section (*1*), shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

108B. (*1*) Every body corporate, or bodies corporate under the same management, holding whether singly or in the aggregate, ten per cent. or more of the nominal value of the equity share capital of any other company, shall, before transferring any such share give to the Central Government an intimation of its proposal to transfer such shares, and every such intimation shall include a statement as to the particulars of the share proposed to be transferred, the name and address of the person to whom the share is proposed to be transferred, the share holding, if any, of the proposed transferee in the concerned company and such other particulars as may be prescribed. Restriction on the transfer.

(*2*) Where, on receipt of an intimation given under sub-section (*1*) or otherwise, the Central Government is satisfied that as a result of such transfer, a change in the composition of the Board of directors of the company is likely to take place and that such change would be prejudicial to the interest of the company or to the public interest, it may by order, direct that—

(*a*) no such share shall be transferred except with the previous approval of the Central Government, or

(*b*) where such share is held in a company engaged in any industry specified in Schedule XIII, such share shall be transferred to the Central Government or to such corporation owned or controlled by that Government as may be specified in the direction.

(*3*) Where a direction is made by the Central Government under clause (*b*) of sub-section (*2*), the share referred to in such direction shall stand transferred to the Central Government or the corporation specified therein, and the Central Government or the specified corporation, as the case may be, shall pay, in cash, to the holder of such share an amount equal to the market value of such share;

Explanation.—In this sub-section, "market value" means, in the case of a share which is quoted on any recognised stock exchange, the value quoted at such stock exchange on the date on which the direction is made, and, in any other case, such value as may be mutually agreed upon between the holder of the share and the Central Government or the specified corporation, as the case may be, or in the absence of such agreement, as may be determined by the Court.

(*4*) If the Central Government does not make any direction under sub-section (*2*) within sixty days from the date of receipt by it of the intimation, given under sub-section (*1*), the provisions contained in sub-section (*2*) with regard to the transfer of such share shall not apply.

(*5*) (*a*) Every company which makes any transfer of shares in contravention of the provisions of this section, shall be punishable with fine which may extend to five thousand rupees.

(*b*) Where any contravention of this section has been made by a company, every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years.

(c) Every other person who transfers or acquires any share in contravention of the provisions of this section shall be punishable with fine which may extend to five thousand rupees, or with imprisonment for a term which may extend to three years, or with both.

Restriction on the transfer of shares of foreign companies.

108C. (*1*) No—

(*i*) body corporate, or bodies corporate under the same management, which holds, or hold in the aggregate, or

(*ii*) individual, who holds, whether by himself or together with his relatives, ten per cent. or more of the nominal value of the equity share capital of a foreign company, having an established place of business in India, shall transfer any share in such foreign company to any citizen of India or any body corporate incorporated in India except with the previous approval of the Central Government.

(*2*) (*a*) Every company which makes any transfer of shares in contravention of the provisions of this section, shall be punishable with fine which may extend to five thousand rupees.

(*b*) Where any contravention of this section has been made by a company, every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years.

(c) Every other person who transfers or acquires any share in contravention of the provisions of this section, shall be punishable with fine which may extend to five thousand rupees, or with imprisonment for a term which may extend to three years, or with both.

Power of Central Government to

108D. (*1*) Where the Central Government is satisfied that as a result of the transfer of any share or block of shares of a company, a change in the controlling interest of the company is likely to take place and that such change is prejudicial to the interests of the com-

pany or to the public interest, that Government may direct the company not to give effect to the transfer of any such share or block of shares and— direct companies not to give effect to the transfer.

(a) where the transfer of such share or block of shares has already been registered, not to permit the transferee or any nominee or proxy of the transferee to exercise any voting or other rights attaching to such share or block of shares,

(b) where the transfer of such share or block of shares has not been registered, not to permit any nominee or proxy of the tranferor to exercise any voting or other rights attaching to such share or block of shares.

(2) Where any direction is made by the Central Government under sub-section (1), the share or the block of shares referred to therein shall stand retransferred to the person from whom it was acquired and thereupon the amount paid by the transferee for the acquisition of such share or block of shares shall be refunded to him by the person from whom such share or block of shares was acquired by such transferee.

(3) If the refund referred to in sub-section (2) is not made within a period of thirty days from the date of the direction referred to in sub-section (1), the Central Government shall, on the application of the person entitled to get the refund, direct, by order, the refund of such amount and such order may be enforced as if it were a decree made by a Civil Court.

108E. (1) Every person who exercises any voting or other right in relation to any share acquired in contravention of the provisions of section 108A, section 108B or section 108C shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine. Penalty for contravention of section 108A, 108B, or 108C.

(2) If any company gives effect to any voting or other right exercised in relation to any share acquired in contravention of the provisions of section 108A, section 108B or section 108C, the company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees, or with imprisonment for a term which may extend to three years, or with both.

108F. Nothing contained in section 108A, section 108B, section 108C or section 108D shall apply to the transfer of any share to, or by,— Nothing in sections 108A to apply to Government companies, etc.

(a) any company in which not less than fifty-one per cent of the share capital is held by the Central Government;

(b) any corporation (not being a company) established by or under any Central Act;

(c) any public financial institution specified by or under section 4A.

Preference share when to be included for determination of percentages specified in sections 108A to 108F.

108G. For the purposes of sections 108A to 108F, the expression "equity share" shall include such preference share as,—

(*i*) having been issued before the commencement of this Act, carries, under section 90, a voting right or

(*ii*) has, by operation of law, a voting right similar to a voting right attaching to an equity share.

Amendment of section 141.

11. (*1*) In section 141 of the principal Act, for the word "Court", wherever it occurs, the words "Central Government" shall be substituted.

(2) Nothing in sub-section (*1*) shall affect any order made by the Court under section 141 or any proceeding relating to any matter specified in that section which is pending before the Court at the commencement of the Companies (Amendment) Act, 1972.

Amendment of section 186.

12. In section 186 of the principal Act, in sub-section (*1*), for the word "Court", wherever it occurs, the words "Central Government" shall be substituted.

Insertion of new sections 187C and 187 D.

13 .After section 187B of the principal Act, the following sections shall be inserted, namely:—

Declaration by persons not holding beneficial interest in any share.

"187C. (*1*) Notwithstanding anything contained in section 150, section 153B or section 187B, a person, whose name is entered, at the commencement of the Companies (Amendment) Act, 1972, or at any time thereafter, in the register of members of a company as the holder of a share in that company but who does not hold the beneficial interest in such share, shall, within such time and in such form as may be prescribed, make a declaration to the company specifying the name and other particulars of the person who holds the beneficial interest in such share.

(2) Notwithstanding anything contained elsewhere in this Act, a person who holds a beneficial interest in a share or a class of shares of a company shall, within thirty days from the commencement of the Companies (Amendment) Act, 1972, or within thirty days after his becoming such beneficial owner, whichever is later, make a declaration to the company specifying the nature of his interest, particulars of the person in whose name the shares stand registered in the books of the company and such other particulars as may be prescribed.

(3) Whenever there is a change in the beneficial interest in such shares the beneficial owner shall, within thirty days, from the date of such change, make a declaration to the company in such form and containing such particulars as may be prescribed.

(*4*) Notwithstanding anything contained in section 153 where any declaration referred to in sub-section (*1*), sub-section (*2*) or sub-section (*3*) is made to a company, the company shall make a note of such declaration, in its register of members and shall file, within thirty days from the date of receipt of the declaration by it, a return in the prescribed form to the Registrar with regard to such declaration.

(*5*) (*a*) If any person, being required by the provisions of sub-section (*1*), sub-section (*2*) or sub-section (*3*), to make a declaration, fails, without any reasonable excuse, to do so, he shall be punishable with fine which may extend to one thousand rupees for every day during which the failure continues.

(*b*) If a company fails to comply with the provisions of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to one hundred rupees for every day during which the default continues.

(*6*) Any charge, promissory note or any other collateral agreement, created, executed or entered into in relation to any share, by the ostensible owner thereof, or any hypothecation by the ostensible owner of any share, in respect of which a declaration is required to be made under the foregoing provisions of this section, but not so declared, shall not be enforceable by the beneficial owner or any person claiming through him.

Investigation of beneficial ownership of shares in certain cases.

187D. Where it appears to the Central Government that there are good reasons so to do, it may appoint one or more Inspectors to investigate and report as to whether the provisions of section 187C have been complied with with regard to any share, and thereupon the provisions of section 247 shall, as far as may be, apply to such investigation as if it were an investigation ordered under that section".

Amendment of section 192.

14. In section 192 of the principal Act, in sub-section (*4*),—

(*i*) in item (*ii*) of clause (*ee*), for the word and figures "section 294", the words and figures "section 294 or section 294AA" shall be substituted;

(*ii*) after clause (*f*), the following clause shall be inserted, namely:—

"(*g*) copies of the terms and conditions of appointment of a sole selling agent appointed under section 294 or of a sole selling agent or other person appointed under section 294AA.".

Insertion of new section 204A.

15. After section 204 of the principal Act, the following section shall be inserted, namely:—

Restrictions on the appointment of former managing agents or secretaries and treasurers to any office.

"204A. (*1*) Except with the previous approval of the—

(*a*) company in general meeting, and

(*b*) Central Government,

no company shall, during a period of five years from the commencement of the Companies (Amendment) Act, 1972, appoint as secretary, consultant or adviser or to any other office, by whatever name called, any individual, firm or body corporate who, or which, had before the 3rd day of April, 1970, been—

(*i*) holding office as the managing agent or secretaries and treasurers of the company, or

(*ii*) any associate of the managing agents or secretaries and treasurers of such company:

Provided that where any such appointment has been made before the commencement of the Companies (Amendment) Act, 1972, no such appointment shall be continued by the company after a period of six months from such commencement unless such appointment has been approved by the company in general meeting and the Central Government before the expiry of the said period.

(*2*) (*a*) Where any individual, firm or body corporate, who, or which, had, before the 3rd day of April, 1970, been—

(*i*) holding office as the managing agent or secretaries and treasurers of a company, or

(*ii*) any associate of the managing agent or secretaries and treasures of such company,

Has been appointed by such company at any time during a period of five years preceding the 3rd day of April, 1970, or at any time after that date as its secretary, consultant or adviser, or to any other office under it, by whatever name called, the Central Government, may, if it appears to it that there is good reason for so doing, require the company to furnish to it such information as it may consider necessary, with regard to the terms and conditions of the appointment of such individual, firm or body corporate as secretary, consultant or adviser or as the holder of such other office, for the purpose of determining whether or not such terms and conditions are prejudicial to the interest of the company.

(*b*) If the company refuses or neglects to furnish any such information, the Central Government may appoint a competent person to investigate and report on the terms and conditions of appointment to any of the offices referred to in clause (*a*) and the provisions of section 240A shall, so far as may be, apply, to such investigation, as they apply to any other investigation made under any other provision of this Act.

(*c*) If, after perusal of the information furnished by the company, or, as the case may be, the report submitted by the person appointed under clause (*b*), the Central Government is of opinion that the terms and conditions of appointment to any of the offices referred to in clause (*a*) are prejudicial to the interests of the company, it may, by order, make such variations in those terms and conditions as would, in its opinion, no longer render such terms and conditions of appointment prejudicial to the interests of the company.

(*d*) As from such date as may be specified by the Central Government in the order aforesaid, the appointment referred to in clause (*a*) shall be regulated by the terms and conditions as varied by that Government.

(*3*) For the purposes of this section, the expression "appointment" includes re-appointment, employment and re-employment.'

16. After section 205 of the principal Act, the following sections shall be inserted, namely:- Insertion of new sections 205A and 205B.

Dividend to be paid out of special dividend account.

'205A. (1) Whenever any dividend is declared out of the profits of a company, the company shall, within seven days from the date of such declaration, transfer the total amount which is to be distributed to the shareholders as dividend to a special account to be opened by the company in that behalf in any scheduled bank, to be called "the Dividend Account of.....Company Limited|.....Company (Private) Limited."

(2) Where the whole or any part of any dividend, declared by a company before the commencement of the Companies (Amendment) Act, 1972, remains unpaid at such commencement, the company shall, within a period of six months from such commencement transfer such unpaid amount to the account referred to in sub-section (1).

(3) Where, owing to inadequacy or absence of profits in any year, any company proposes to declare dividend out of the accumulated profits earned by the company in previous years and transferred by it to the reserves, such declaration of dividend shall not be made except in accordance with such rules as may be made by the Central Government in this behalf, and, where any such declaration is not in accordance with such rules, such declaration shall not be made except with the previous approval of the Central Government.

(4) No dividend shall be paid or distributed by a company except out of the amount transferred to the account referred to in sub-section (1).

(5) If the default is made in transferring the total amount referred to in sub-section (1) or any part thereof to the dividend account of the concerned company, the company shall pay, from the date of such default, interest on so much of the amount as has not been transferred to the said account, at the rate of twelve per cent. per annum.

(6) Any money transferred to the dividend account of a company in pursuance of this section which remains unpaid or unclaimed for a period of three years from the date of such transfer, shall be transferred by the company to the general revenue account of the Central Government but a claim to any money so transferred to the general revenue account may be preferred to the Central Government by the person to whom the money is due and shall be dealt with as if such transfer to the general revenue account had not been made, the order, if any, for payment of the claim being treated as an order for refund of revenue.

(7) The campany shall, when making any transfer under sub-section (6) to the general revenue account of the Central Government any unpaid or unclaimed dividend, furnish to such officer as the Central Government may appoint in this behalf a statement in the prescribed form setting forth in respect of all sums included in such transfer, the nature of the sums, the names and last known addresses of the persons entitled to receive the sum, the amount to which each is entitled and the nature of his claim thereto and such other particulars as may be prescribed.

(8) The company shall be entitled to a receipt from the Reserve Bank of India for any money transferred by it to the general revenue account of the Central Government and such receipt shall be an effectual discharge of the company in respect thereof.

(9) If a company fails to comply with any of the requirements of this section, the company and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the failure continues.

Payment of unpaid or unclaimed dividend.

205B. Any person claiming to be entitled to any money transferred under sub-section (6) of section 205A to the general revenue account of the Central Government, may apply to the Central Government for an order for payment of the money claimed; and the Central Government may, if satisfied, whether on a certificate by the company or otherwise, that such person is entitled to the whole or any part of the money claimed, make an order for the payment to that person of the sum due to him after taking such security from him as is may think fit.'

Amendment of section 209.

17. In section 209 of the principal Act, in sub-section (4),—

(i) the brackets and letter "(a)" shall be omitted,

(ii) clause (b), (c) and (d) shall be omitted.

Insertion of new section 209A.

18. After section 209 of the principal Act, the following section shall be inserted, namely:—

Inspection of books of account, etc., of companies.

"209A. (1) The books of account and other books and papers of every company shall be open to inspection during business hours—

(i) by the Registrar, or

(ii) by such officer of Government as may be authorised by the Central Government in this behalf:

Provided that such inspection may be made without giving any previous notice to the company or any officer thereof.

(2) It shall be the duty of every director, other officer or employee of the company to produce to the person making inspection under sub-section (1), all such books of account and other books and papers of the company in his custody or control and to furnish him with any statement, information or explanation relating to the affairs of the company as the said person may require of him within such time and at such place as he may specify.

(3) It shall also be the duty of every director, other officer or employee of the company to give to the person making inspection under this section all assistance in connection with the inspection which the company may be reasonably expected to give.

(4) The person making the inspection under this section may, during the course of inspection,—

(i) make or cause to be made copies of books of account and other books and papers, or

(*ii*) place or cause to be placed any marks of identification thereon in token of the inspection having been made.

(5) Notwithstanding anything contained in any other law for the time being in force or any contract to the contrary, any person making an inspection under this section shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:— 5 of 1908.

(*i*) the discovery and production of books of account and other documents, at such place and such time as may be specified by such person;

(*ii*) summoning and enforcing the attendance of persons and examining them on oath;

(*iii*) inspection of any books, registers and other documents of the company at any place.

(6) Where an inspection of the books of account and other books and papers of the company has been made under this section, the person making the inspection shall make a report to the Central Government.

(7) Any officer authorised to make an inspection under this section shall have all the powers that a Registrar has under this Act in relation to the making of inquiries.

(8) If default is made in complying with the provisions of this section, every officer of the company who is in default shall be punishable with fine which shall not be less than five thousand rupees, and also with imprisonment for a term not exceeding one year.

(9) Where a director or any other officer of a company has been convicted of an offence under this section he shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and on such vacation of office, shall be disqualified for holding such office in any company, for a period of five years from such date.".

19. In section 217 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:— Amendment of section 217.

'(2A)((*a*) The Board's report shall also include a statement showing the name of every employee of the company who—

(*i*) if employed throughout the financial year, was in receipt of remuneration for that year which, in the aggregate, was not less than thirty-six thousand rupees; or

(*ii*) if employed for a part of the financial year, was in receipt of remuneration for any part of that year, at a rate which, in the aggregate, was not less than three thousand rupees per month.

(*b*) The statement referred to in clause (*a*) shall also indicate the relationship, if any, of any such employee to any director or manager of the company and such other particulars as may be prescribed.

Explanation.—"Remuneration" has the meaning assigned to it in the *Explanation* to section 198'.

Amendment of section 224.

20. In section 224 of the principal Act,—

(*i*) in sub-section (*1A*), the words "unless he is a retiring auditor" shall be omitted;

(*ii*) after sub-section (*1A*), the following sub-section shall be inserted, namely:—

"(*1B*) At any annual general meeting, a retiring auditor, by whatever authority appointed, shall not be re-appointed without the prior approval of the Central Government, if he or the firm in which he is a partner has been the auditor of the company for three consecutive financial years preceding the year in which the annual general meeting is held or ought to have been held, and an application for such approval shall be made in such form as may be prescribed.";

(*iii*) in sub-section (*2*), for the words "At any annual general meeting," the words "Subject to the provisions of sub-section (*1B*), at any annual general meeting," shall be substituted.

Insertion of new section 224A.

21. After section 224 of the principal Act, the following section shall be inserted, namely:—

Auditor not to be appointed except with the approval of Central Government in certain cases.

'224A. (*1*) In the case of a company in which not less than twenty-five per cent. of the subscribed share capital is held, whether singly or in any combination, by—

(*a*) a public financial institution or a Government company or Central Government or any State Government, or

(*b*) any financial or other institution established by any Provincial or State Act in which a State Government holds not less than fifty-one per cent. of the subscribed share capital, or

(*c*) a Nationalised Bank or an insurance company carrying on general insurance business,

the appointment or re-appointment of an auditor shall not have effect unless approved by the Central Government.

(*2*) Where the auditor appointed by any company referred to in sub-section (*1*) at its annual general meeting is not approved by the Central Government, it shall be deemed that no auditors had been appointed by the company at its annual general meeting, and thereupon the provisions of sub-section (*3*) of section 224 shall become applicable in relation to such company.

Explanation.—For the purposes of this section,—

(*a*) "general insurance business" has the meaning assigned to it in the General Insurance (Emergency Provisions) Act, 1971; 17 of 1971.

(*b*) "Nationalised Bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970.' 5 of 1970.

Amendment of section 233B.

22. In section 233B of the principal Act,—

(*i*) in sub-section (*1*), the words "or other person" shall be omitted;

(*ii*) to sub-section (*1*), the following proviso shall be added, namely:—

"Provided that if the Central Government is of opinion that sufficient number of cost accountants within the meaning of the Cost and Works Accountants Act, 1959, are in practice and are available for conducting the audit of the cost accounts of any company, that Government may, by notification in the Official Gazette, direct that, on and from such date as may be specified in the notification, no Chartered Accountant within the meaning of the Chartered Accountants Act, 1949, shall conduct the audit of cost accounts of any company.";

23 of 1959.

38 of 1949.

(*iii*) for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) The auditor under this section shall be appointed by the Board of directors of the company with the previous approval of the Central Government.";

(*iv*) in sub-section (*4*), for the words "Company Law Board", the words "Central Government" shall be substituted;

(*v*) after sub-section (*4*), the following sub-section shall be inserted, namely:—

"(5) (*a*) A person referred to in sub-section (3) or sub-section (*4*) of section 226 shall not be appointed or re-appointed for conducting the cost audit of the cost accounts of a company.

(*b*) A person appointed, under section 224, as an auditor of a company, shall not be appointed or re-appointed for conducting the audit of the cost accounts of that company.

(*c*) If a person, appointed for conducting the audit of cost accounts of a company, becomes subject, after his appointment, to any of the disqualifications specified in clause (*a*) or clause (*b*) of this sub-section, he shall, on and from the date on which he becomes so subject, cease to conduct the audit of the cost accounts of the company.

(*6*) Upon receipt of an order under sub-section (*1*), it shall be the duty of the company to give all facilities and assistance to the person appointed for conducting the audit of the cost accounts of the company.

(*7*) The company shall, within thirty days from the date of receipt of a copy of the report referred to in sub-section (*4*), furnish the Central Government with full information and explanations on every reservation or qualification contained in such report.

(*8*) If, after considering the report referred to in sub-section (*4*) and the information and explanations furnished by the company under sub-section (7), the Central Government is of opinion that any further information or explanation is necessary, that Government may call for such further information and

explanation and thereupon the company shall furnish the same within such time as may be specified by that Government.

(*9*) On receipt of the report referred to in sub-section (*4*) and the informations and explanations furnished by the company under sub-section (*7*) and sub-section (*8*), the Central Government may take such action on the report, in accordance with the provisions of this Act or any other law for the time being in force, as it may consider necessary.

(*10*) The Central Government may direct the company whose cost accounts have been audited under this section to circulate to its members, along with the notice of the annual general meeting to be held for the first time after the submission of such report, the whole or such portion of the said report as it may specify in this behalf.

(*11*) If default is made in complying with the provisions of this section, the company shall be liable to be punished with fine which may extend to five thousand rupees, and every officer of the company who is in default, shall be liable to be punished with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.".

Amendment of section 209.

23. In section 269 of the principal Act,—

(*i*) in sub-section (*1*) (including the proviso thereto), the words "for the first time", wherever they occur, shall be omitted;

(*ii*) to sub-section (*1*), the following *explanation* shall be added, namely:—

'*Explanation.*—In this sub-section, and in sub-sections 3) and (*5*), "appointment" includes "re-appointment" and "whole-time director" includes "a director in the whole-time employment of the company.';

(*iii*) after sub-section (*2*), the following sub-sections shall be inserted, namely:—

"(*3*) The Central Government shall not accord its approval under sub-section (*1*), in any case, unless it is satisfied that—

(*a*) it is in the interests of the company to have a managing or whole-time director,

(*b*) the proposed managing or whole-time director of the company is, in its opinion, a fit and proper person to be appointed as such and that the appointment of such person as director is not against the public interest, and

(*c*) the terms and conditions of such appointment of the proposed managing or whole-time director of the company are fair and reasonable.

(*4*) While according its approval under sub-section (*1*), the Central Government may, if it is of opinion that in the interests of the company it is necessary so to do, accord the approval for a period lesser than the period for which the person is proposed to be appointed by the company.

(5) If the appointment of a person as a managing or whole-time director is not approved by the Central Government, the person so appointed shall vacate his office as such managing or whole-time director, and if he omits or fails to do so, he shall be punishable with fine which may extend to five hundred rupees for every day during which he omits or fails to vacate such office.".

Insertion of new section 294AA.

24. After section 294A of the principal Act, the following section shall be inserted, namely:—

Power of Central Government to prohibit the appointment of sole selling agents in certain cases.

'294AA. (*1*) Where the Central Government is of opinion that the demand for goods of any category, to be specified by that Government, is substantially in excess of the production or supply of such goods and that the service of sole selling agents will not be necessary to create a market for such goods, the Central Government may, by notification in the Official Gazette, declare that sole selling agents shall not be appointed by a company for the sale of such goods.

(*2*) No company shall appoint any individual, firm or body corporate, who or which has a substantial interest in the company, as sole selling agent of that company unless such appointment has been previously approved by the Central Government.

(*3*) No company having a paid-up capital of rupees fifty lakhs or more shall appoint a sole selling agent except with the consent of the company accorded by a special resolution and the approval of the Central Government.

(*4*) The provisions of sub-sections (5), (*6*) and (7) of section 294 shall, so far as may be, apply to the sole selling, or the sole purchasing or buying, agents of a company.

(5) A company seeking approval under this section shall furnish such particulars as may be prescribed.

(*6*) Where any appointment has been made of a sole selling agent by a company before the commencement of the Companies (Amendment) Act, 1972, and the appointment is such that it could not have been made except on the authority of a special resolution passed by the company and the approval of the Central Government if sub-section (*2*), sub-section (*3*) and sub-section (*8*), were in force at the time of such appointment, the company shall obtain such authority and approval within six months from such commencement; and if such authority and approval are not so obtained, the appointment of the sole selling agent shall stand terminated on the expiry of six months from such commencement.

(*7*) If the company in general meeting disapproves the appointment referred to in sub-section (*3*), such appointment shall cease to have effect from the date of the general meeting.

(*8*) The provisions of this section except those of sub-section (*1*), shall apply so far as may be to the appointment by a company

of a sole agent for the buying or purchasing of goods on behalf of the company.

Explanation.—In this section,—

(*a*) "appointment" includes "re-appointment",

(*b*) "substantial interest",—

(*i*) in relation to an individual, means the beneficial interest held by such individual or any of his relatives, whether singly or taken together, in the shares of the company, the aggregate amount paid-up on which exceeds five lakhs of rupees or five per cent. of the paid-up share capital of the company, whichever is the lesser;

(*ii*) in relation to a firm, means the beneficial interest held by one or more partners of the firm or any relative of such partner, whether singly or taken together, in the shares of the company, the aggregate amount paid-up on which exceeds five lakhs of rupees or five per cent. of the paid-up share capital of the company, whichever is the lesser;

(*iii*) in relation to a body corporate, means the beneficial interest held by such body corporate or one or more of its directors or any relative of such director, whether singly or taken together, in the shares of the company, the aggregate amount paid-up on which exceeds five lakhs of rupees or five per cent. of the paid-up share capital of the company, whichever is the lesser.'.

Amendment of section 297.

25. In section 297 of the principal Act, to sub-section (*1*), the following proviso shall be added, namely:—

"Provided that in the case of a company having a paid-up capital of not less than rupees twenty-five lakhs, no such contract shall be entered into except with the previous approval of the Central Government.".

Amendment of section 314.

26. In section 314 of the principal Act,—

(*i*) in clause (*b*) of sub-section (*1*), for the portion beginning with "no partner or relative" and ending with "legal or technical adviser", the words "no partner or relative of such director, no firm in which such director, or a relative of such director, is a partner, no private company of which such director is a director or member, and no director or manager of such a private company shall hold any office or place of profit carrying a total monthly remuneration of five hundred rupees or more except that of managing director or manager" shall be substituted;

(*ii*) after sub-section (*1A*), the following sub-section shall be inserted, namely:—

"(*1B*) Notwithstanding anything contained in sub-section (*1*),—

(*a*) no partner or relative of a director or manager,

(*b*) no firm in which such director or manager, or relative of either, is a partner,

(c) no private company of which such a director or manager, or relative of either, is a director or member,

shall hold any office or place of profit in the company which carries a total monthly remuneration of not less than three thousand rupees, except with the prior consent of the company by a special resolution and the approval of the Central Government:

Provided that in a case where no office of profit could have been held in the company by a person if this section had been in force at the time when the appointment or re-appointment to such office of profit was made, the company shall, within a period of six months from the commencement of the Companies (Amendment) Act, 1972, obtain the approval of the company in general meeting and of the Central Government for the holding, by such person, of the office of profit.";

(*iii*) sub-section (*2*) shall be re-lettered as clause (*a*) thereof, and after clause (*a*), as so re-lettered, the following clause shall be inserted, namely:—

"(*b*) The company shall not waive the recovery of any sum refundable to it under clause (a) unless permitted to do so by the Central Government.";

(*iv*) in sub-section (*3*), for the words "within the meaning of sub-section (*1*)", the words "within the meaning of this section" shall be substituted;

(*v*) after sub-section (3), the following sub-section shall be inserted, namely:—

"(*4*) Nothing in this section shall apply to a person, who being the holder of any office of profit in the company, is appointed by the Central Government, under section 408, as a director of the company.".

27. In section 370 of the principal Act, sub-section (*1B*) shall be omitted. Amendment of section 370.

28. In section 372 of the principal Act, in clause (*b*) of sub-section (*11*), for the words, figures and letter "sub-section (*1B*) of section 370", the word, figure and letter "section 4B" shall be substituted. Amendment of section 372.

29. After section 383 of the principal Act, the following section shall be inserted, namely:— Insertion of new section 383A.

"383A. (*1*) Every company having a paid-up capital of not less than rupees twenty-five lakhs shall have a whole-time secretary, who shall possess such qualifications as may be prescribed, and where the Board of directors of any such company comprises only two directors, neither of them shall be the secretary of the company. Certain companies to have secretaries.

(2) Where, at the commencement of the Companies (Amendment) Act, 1972,—

(*a*) any firm or body corporate is holding office, as the secretary of a company, such firm or body corporate shall, within six months from such commencement, vacate office as secretary of such company;

(*b*) any individual is holding office as the secretary of more than one company, he shall, within a period of six months from such commencement, exercise his option as to the company of which he intends to continue as the secretary and shall, on and from such date, vacate office as secretary in relation to all other companies.".

Amendment of section 408.

30. In section 408 of the principal Act,—

(*i*) in sub-section (*1*), for the words "not more than two persons", the words "such number of persons as the Central Government may by order in writing, specify as being necessary to effectively safeguard the interests of the company, or its shareholders or the public interest" shall be substituted;

(*ii*) in sub-section (*2*), for the words "not more than two persons", the words "such number of persons as the Central Government may, by order in writing, specify as being necessary to effectively safeguard the interests of the company, or its shareholders or the public interest" shall be substituted;

(*iii*) after sub-section (5), the following sub-sections shall be inserted, namely:—

"(*6*) Notwithstanding anything contained in this Act or in any other law for the time being in force, where any person is appointed by the Central Government to hold office as director or additional director of a company in pursuance of sub-section (*1*) or sub-section (*2*), the Central Government may issue such directions to that company as it may consider necessary or appropriate in regard to its affairs.

(*7*) The Central Government may require the persons appointed as directors or additional directors in pursuance of sub-section (*1*) or sub-section (*2*) to report to the Central Government from time to time with regard to the affairs of the company.".

Amendment of section 591.

31. Section 591 of the principal Act shal be re-numbered as sub-section (*1*), thereof, and after sub-section (*1*), as so re-numbered, the following sub-section shall be inserted, namely:—

"(*2*) Notwithstanding anything contained in sub-section (*1*), where not less than fifty per cent. of the paid-up share capital (whether equity or preference or partly equity and partly preference) of a company incorporated outside India and having an established place of business in India, is held by one or more citizens of India or by one or more bodies corporate incorporated in

India, or by one or more citizens of India and one or more bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with such of the provisions of this Act as may be prescribed with regard to the business carried on by it in India, as if it were a company incorporated in India.".

Amendment of section 600.

32. In section 600 of the principal Act, sub-section (3) shall be re-lettered as clause (*a*) thereof, and after clause (*a*), as so re-lettered, the following clause shall be inserted, namely:—

"(*b*) The provisions of section 209A and sections 234 to 246 (both inclusive) shall, so far as may be, apply to a foreign company having an established place of business in India, as they apply to a company incorporated in India."

Amendment of section 616.

33. In section 616 of the principal Act, after clause (*d*), the following clause shall be inserted, namely:—

"(*e*) to such body corporate, incorporated by any Act for the time being in force, as the Central Government may, by notification in the Official Gazette, specify in this behalf, subject to such exceptions, modifications or adaptations, as may be specified in the notification.".

Amendment of section 619.

34. In section 619 of the principal Act, to sub-section (2), the following proviso shall be added, namely:—

"Provided that a person who has functioned as an auditor of a company for three consecutive years shall not be re-appointed as an auditor of that company unless the Central Government, for reasons to be recorded by it in writing, considers the re-appointment of such person as auditor of that company to be necessary in the interests of that company.".

Insertion of new section 619B.

35. After section 619A of the principal Act, the following section shall be inserted, namely :—

Provisions of section 619 to apply to certain companies.

"619B. The provisions of section 619 shall apply to a company in which not less than fifty-one per cent. of the paid-up share capital is held by one or more of the following, as if it were a Government company, namely:—

(*a*) the Central Government and one or more Government companies, or

(*b*) any State Government or Governments and one or more Government companies; or

(*c*) the Central Government, one or more State Government and one or more Government companies; or

(*d*) the Central Government and one or more corporations owned or controlled by the Central Government; or

(*e*) the Central Government, one or more State Governments and one or more corporations owned or controlled by the Central Government; or

(*f*) more than one corporation owned or controlled by the Central Government or the State Government; or

(*g*) more than one Government company".

Insertion of new section 637AA.

35. After section 619A of the principal Act, the following section shall be inserted, namely:—

Power of Central Government to fix a limit with regard to remuneration.

"637AA. Notwithstanding anything contained in section 198, section 309 or section 637A, the Central Government may, while according its approval under section 269, to any appointment or to any remuneration under section 309, section 310, section 311 or section 387, fix the remuneration of the person so appointed or the remuneration, as the case may be, within the limits specified in this Act, at such amount or percentage of profits of the company, as it may deem fit and while fixing the remuneration, the Central Government shall have regard to—

(*a*) the financial position of the company;

(*b*) the remuneration or commission drawn by the individual concerned in any other capacity, including his capacity as a sole selling agent;

(*c*) the remuneration or commission drawn by him from any other company;

(*d*) professional qualifications and experience of the individual concerned.

(*e*) public policy relating to the removal of disparities in income.".

Insertion of new Schedule XIII.

37. After Schedule XII of the principal Act, the following Schedule shall be inserted, namely:—

"SCHEDULE XIII

(*See* section 108B)

PART I

1. Aircraft.

2. Air transport.

3. Arms and ammunition and allied items of defence equipment.

4. Atomic energy.

5. Coal and lignite.

6. Heavy castings and forgings of iron and steel.

7. Heavy electrical plant including large hydraulic and steam turbines.

8. Heavy plant and machinery required for iron and steel production, for mining, for machine tool manufacture and for such other basic industries as may be specified by the Central Government.

9. Iron and Steel.

10. Mineral oils.

11. Minerals specified in the Schedule to the Atomic Energy (Control of Production and Use) Order, 1953.

12. Mining and processing of copper, lead, zinc, tin, molybdenum and wolfram.

13. Mining of iron ore, manganese ore, chrome ore, gypsum, sulphur, gold and diamond.

14. Railway transport.

15. Ship-building.

16. Telephones and telephone cables, telegraph and wireless apparatus (excluding radio receiving sets).

PART II

1. Aluminium and other non-ferrous metals not included in Part I.

2. All other minerals except "minor minerals" as defined in rule 3 of the Minerals Concession Rules, 1949.

3. Antibiotics and other essential drugs.

4. Basic and intermediate products required by chemical industries such as the manufacture of drugs, dyestuffs and plastics.

5. Carbonisation of coal.

6. Chemical pulp.

7. Ferro alloys and tool steels.

8. Fertilizers.

9. Machine tools.

10. Road transport.

11. Sea transport.

12. Synthetic rubebr.".

Substitution of new section for section 22 of Act 42 of 1956.

38. For section 22 of the Securities Contracts (Regulation) Act, 1956, the following section shall be substituted, namely:—

Right of appeal against refusal of stock exchanges to list securities of public companies.

"22. Where a recognised stock exchange acting in pursuance of any power given to it by its bye-laws, refuses to list the securities of any public company, the company shall be entitled to be furnished with reasons for such refusal, and may,—

(*a*) within fifteen days from the date on which the reasons for such refusal are furnished to it, or

(*b*) where the stock exchange has omitted or failed to dispose of, within the time specified in sub-section (*1*) of section 73 of the Companies Act, 1956 (hereafter in this section referred to as the "specified time"), the application for permission for the shares or debentures to be dealt with on the stock exchange, within fifteen days from the date of expiry of the specified time or within such further period, not exceeding one month, as the Central Government may, on sufficient cause being shown, allow.

1 of 1956.

appeal to the Central Government against such refusal, omission or failure, as the case may be, and thereupon the Central Government may, after giving the stock exchange an opportunity of being heard,—

(*i*) vary or set aside the decision of the stock exchange, or

(*ii*) where the stock exchange has omitted or failed to dispose of the application within the specified time, grant or refuse the permission,

and where the Central Government sets aside the decision of the recognised stock exchange or grants the permission, the stock exchange shall be bound to act in confromity with the orders of the Central Government.'.

Amendment of Act 54 of 1969.

39. In the Monopolies and Restrictive Trade Practices Act, 1969, in clause (*g*) of section 2, in sub-clause (*iii*)(*c*) and sub-clause (*v*), for the word and figures "section 370", the word, figure and letter "section 4A" shall be substituted.

STATEMENT OF OBJECTS AND REASONS

The Companies Act was brought on the Statute Book with effect from 1st April, 1956. Thereafter it has undergone amendments by means of Amending Acts, of which those of 1960, 1965 and 1969 may be mentioned as incorporating some significant changes in the law. As observed in the Report of the Jenkins Committee in the U.K., the Company law is not a 'field of legislation' in which 'finality is to be expected', as the law 'falls to be applied to a growing and changing subject matter' and the 'growing uses of the company system as an instrument of business and finance and the possibilities of abuse inherent in that system.'

2. The present Bill seeks to meet cases of such abuse or distortion of the system which have, of late assumed comparatively serious proportions. It further represents an instalment of the remedial measures under contemplation as a result of the process of comprehensive review of the working of the Act, which has been undertaken by Government, in the light of the report of the Administrative Reforms Commission and its concerned working group and in the light of various suggestions received by Government from diverse quarters from time to time for the amendment of the Act.

3. A striking unhealthy phenomenon which has appeared in the corporate sector in recent times is a trend towards take-over of well established companies by individuals or groups or combines. It may be stated in this connection that the provisions of section 372 of the Companies Act, 1956 or section 23 of the Monopolies and Restrictive Trade Practices Act, 1969, are not adequate to regulate the "take-over" of companies. Such take-overs are often unfair to the non-controlling shareholders, particularly the financial institutions, who are kept in the dark while secret negotiations are entered into by third parties with the controlling shareholders who have an edge over the other shareholders in getting better price for their shareholdings. The non-controlling shareholders are thus constrained to continue with their shares in the company, while the control passes into possibly undesirable hands. It is, therefore, proposed under this Bill to provide safeguards against such take-overs.

4. The provisions of the Bill also seek to regulate the transfer of shares by every body corporate, or bodies corporate under the same management, whether holding singly or in the aggregate ten per cent. or more of the nominal value of the equity share capital of a company. But where the shares proposed to be transferred are held in a company engaged in an industry covered by the Industrial Policy Resolution of the Central Government, such shares shall, if so directed by the Central Government, be transferred to the Central Government or to such corporation owned or controlled by that Government, as may be specified in the direction. So also restrictions are sought to be placed on the transfer of shares in a foreign body corporate having an established place of business in India in cases where the shares proposed to be transferred constitute ten per cent. or more of the nominal capital of the foreign company concerned.

5. Section 408 is intended as a corrective against oppression and mismanagement in a company. But it has not proved effective as the directors appointed by the Central Government do not have an effective voice

in the management of the company. The proposed amendment seeks to rectify this position in the interest of the company and in public interest.

6. Under the present Bill some other practices prevalent in the corporate sector, in so far as they may prove injurious or undesirable, are also sought to be checked. The provisions contained in the Bill designed for this purpose deal with the following:—

(1) Failure to enlist shares with all the Stock Exchanges mentioned in a prospectus. In legislating on this point, it is proposed to make an incidental amendment to Securities Contracts (Regulation) Act, 1956.

(2) Invitation of deposits from the public by non-banking companies.

(3) Benami holding of shares.

(4) Continuation of the same auditors for a company for indefinite period giving rise to complaints of monopoly of audit work.

(5) Use of reserve funds by way of dividends to the detriment of company's interest.

(6) Non-availability of liquid funds for payment of dividends declared.

(7) Use of unclaimed dividends by management.

7. Under the present Bill the concept of the expression "under the same management" is proposed to be amended. In view of the abolition of the system of management of companies by managing agents and secretaries and treasurers, the scope of the definition of this expression needs a change so that control by groups in alternative forms or by alternative methods calculated to cause injury to public interest may be avoided. The amendment proposed will also help proper implementation of the concept of inter-connected undertakings within the meaning of section 2(g) of the Monopolies and Restrictive Trade Practices Act, 1969. Therefore an incidental amendment to that Act is also proposed in the present Bill.

8. The Bill proposes to make it compulsory for companies of a comparatively large size to have secretarial assistance. This will encourage the growth of the profession of Company Secretaries, to which Government is committed. It will also promote a better observance by the companies of the laws relating to trade, industry and commerce.

9. It is further proposed in the Bill to put foreign companies of which not less than fifty per cent. of the share capital is held by one or more citizens of India or by one or more bodies corporate incorporated in India on par with Indian companies for the purpose of compliance with such of the provisions of the Act as may be prescribed in that behalf. It is also proposed that the provisions relating to inspection of the books of accounts of companies and investigation into the affairs of companies shall apply to a foreign company having an established place of business in India. This meets the demand that there should be more effective control over the working of foreign companies in this country.

10. The Bill provides for an extension of the scope of section 43A of the Act whereby some private companies satisfying certain conditions shall be deemed to be public companies in certain circumstances. This is meant to bring such private companies under the discipline applicable to public companies.

11. Powers are proposed to be taken to regulate agreements or arrangements which have been, or may be, entered into between the former managing agents or secretaries and treasurers of companies with their erstwhile managed companies in order to ensure that such arrangements are clearly in the interests of the company concerned and are not a device to circumvent the provisions of law abolishing those systems of management.

12. Further, various existing provisions of the Act, such as those relating to inspection, cost audit, sole selling agency, appointment or reappointment of managing or whole-time directors and fixation of their remuneration and contracts in which directors are interested, have been streamlined for a more effective regulation of the working of companies and for preventing unhealthy practices. Besides these, some of the powers of the Court under the Act are proposed to be transferred to Government, in line with the recommendation of the Administrative Reforms Commission. As it is noticed that corporate funds are being misapplied through the instrument of sole purchasing agencies, necessary provisions have also been incorporated in the Bill regulating sole purchasing agencies on the same lines as sole selling agencies.

K. V. RAGHUNATHA REDDY.

NEW DELHI;

The 23rd July, 1972.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE CONSTITUTION OF INDIA

[Copy of letter No. 12|13|72-CL.V., dated the 25th July, 1972 from Shri K. V. Raghunatha Reddy, Minister of Company Affairs to the Secretary, Lok Sabha.]

The President, having been informed of the subject-matter of the proposed Bill further to amend the Companies Act, 1956, section 22 of the Securities Contracts (Regulation) Act, 1956 and clause (g) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969, recommends to the House the consideration of the Bill under article 117 (3) of the Constitution.

Notes on clauses

Clause 2—sub-clause (ii)—Explanations I and II.—In view of the provisions of section 6 of the Companies (Amendment) Act, 1969, this Amendment has become necessary in order that the provision in clause 15 of the Bill with regard to the restrictions on the appointment of former managing agents may be effectively implemented.

Sub-clause (iii).—This provision is consequential to the provision in sub-clause (vii) prohibiting any body corporate from acting as secretary of a company.

Sub-clause (vi)—Explanations I and II.—In view of the provisions of the Bill regarding deposits invited by companies from the public.

Sub-clause (vi).—Explanations I and II.—In view of the provisions of section 6 of the Companies (Amendment) Act, 1969, this amendment has become necessary in order that the provision in clause 15 of the Bill with regard to the restrictions on the appointment of former Secretaries and Treasurers may be effectively implemented.

Sub-clause (vii) (a).—Prohibits any firm or body corporate from acting as secretary of a company.

Sub-clause (vii) (b).—In order to promote the growth of the profession of company secretaries on healthy lines, it is necessary that they should have requisite qualifications. The sub-clause seeks to empower the Central Government to prescribe the qualifications in order that the companies which will be required to employ secretaries may appoint only such persons as have the requisite qualifications to be prescribed. The scope of the functions and duties of a secretary has increased considerably under modern conditions and the Court of Appeal also has held that it is no longer true that a Secretary is a 'purely' ministerial officer of the company. Hence the definition of secretary has been suitably amended.

Clause 3.—This clause introduces a new section *viz.* section 4A, defining "public financial institution" and another new section, namely, section 4B re-defining the concept of "same management".

So far as the concept of "same management" is concerned, the re-definition has been found necessary consequent on the abolition of the system of management by Managing Agents|Secretaries and Treasurers and the changes that are taking place in the corporate practices.

Clauses 4, 8 [*sub-clause* (*i*), *para* 1], 11 *and* 12.—The Administrative Reforms Commission has recommended that the functions which are now discharged by the Courts under the Companies Act, 1956, may be reviewed and those which are essentially of an administrative nature may be transferred to the Executive. This recommendation of the ARC has been examined and it is proposed to transfer some of the functions of the Court of administrative nature to the Central Government.

Clause 5—*sub-clause* (*i*).—The Shastri Committee recommended that the exemptions available to provide companies under the Act should not apply to those private companies in which public money, directly or indirectly, is employed to a considerable extent. Accordingly section 43 was introduced by the Amending Act of 1960 under which, where not less than twenty-five per cent. of the paid-up capital of a private company is held by one or more bodies corporate, such a private company shall become a public company and all the provisions of the Act relating to a public company shall apply to it. At that time the figure of twenty-five per cent. of share ownership by bodies corporate was considered sufficient as a gauge of the public interest involved in a company incorporated as a private company. But it is found from experience that it is possible for bodies corporate in which public interest is considerable to control private companies with very much lower percentage of the paid-up capital of such companies. In order to widen the scope of regulation of companies in which though, incorporated as private, the public interest involved is of a considerable extent, it is considered reasonable to reduce the percentage aforesaid from twenty-five to ten per cent. The Shastri Committee had further recommended that indirect employment of public money in a private company should also be a criterion for making a private company subject to the same restrictions and limitations as a public company. This aspect is not reflected in section 43A as it stands, inasmuch as the loan capital and scale of operations are not made a basis for deeming private companies as public companies. In order to make good this omission, it is further proposed that if a private company with a paid-up capital of Rs. 25 lakhs or more has an average turn-over of Rs. 50 lakhs or more during the three financial years immediately preceding the first date on which the company has the said paid-up share capital and turnover it would also be deemed to be a public company.

Sub-clause (*ii*).—It has been felt that where not less than ten per cent. of the paid-up capital of a public company is held by a private company, the latter becomes acected with public interest and may, well be brought, therefore, into the ambit of section 43A.

Sub-clause (*iii*).—The exemptions conferred by the existing sub-section (6) of section 43A of the Act are withdrawn and hence the said sub-section as well as sub-section (7) which is consequential to it, is being deleted.

Sub-clause (*iv*).—This is a consequential amendment to the changes proposed in section 43A as outlined above.

Clause (6)—It has been the practice of the companies to take deposits from the public at a high rate of interest. Experience has shown that in many cases deposits so taken by the companies have not been refunded on the due dates. In many such cases either the companies have gone into liquidation or the funds are depleted to such an extent that the companies are not in a position to refund the deposits. It is accordingly considered necessary to control the companies inviting deposits from the public. The issue of an advertisement in such form and in such manner as may be prescribed including therein a statement showing the financial position of the company seeking deposits from the public is being made obligatory. Provision has also been made for the Central Government to make rules in consultation with the Reserve Bank of India. Penal provisions have also been included. There is also a provision for the re-

fund of the amount of deposits received by a company in violation of the requirements of the law. The provisions of the Act relating to a prospectus are also made applicable to the issue of such advertisements as contemplated in this clause. The clause will be applicable to all companies other than the banking companies and those specified by the Government in consultation with the Reserve Bank of India.

Clause 7.—*Sub-clauses* (*i*) *and* (*iii*).—Section 73 prescribes certain time limit for enlistment with the stock exchanges. It also contemplates that enlistment has to be done in all the stock exchanges mentioned in the prospectus and in case of failure to do so, the money received in respect of allotment of shares on the basis of the prospectus should be refunded within a specified time. In the recent judgment in Union of India Vs. Allied International Products Limited, the Supreme Court has held that if the stock exchange had intimated that it would give further consideration to an application, the time limit contemplated by the section will not operate. It has also held that if any one of the stock exchanges mentioned in the prospectus approved the application for enlistment, it would mean sufficient compliance with the provisions of section 73 and the allotment made in pursuance of that prospectus would be valid.

It has been felt that the decision of the Supreme Court referred to above is likely to lead to complications inasmuch as the investing public as well as under-writing institutions are likely to lose the protection hitherto enjoyed by them. Hence section 73 is being amended suitably.

Sub-clause (*ii*).—The amendment proposed herein is a clarificatory provision connected with the amendment proposed in sub-clause (*i*).

Clause 8—*sub-clause* (*i*)—*Para* (*ii*) (*a*).—This is consequential to sub-clause (*i*).

Para (*ii*) (b).—This provides a guide-line for the exercise of power by the Central Government and is in line with the existing provision in clause (*ii*) of sub-section (*2*) of this section.

Sub-clause (*2*).—This clarifies that the provisions of this clause shall not disturb pending or past proceedings.

Clause 9.—This clause is of a procedural nature and dispenses with the necessity of passing a resolution for alteration of the Memorandum and filing with the Registrar of Companies of the requisite documents showing increase of share capital, in certain cases. It is, however, required by this clause that the Registrar shall be informed by the Government itself in such cases, so that the Registrar may carry out the necessary alterations in the Memorandum of the company showing the increase in share capital.

Clause 10 *introduces new sections* 108*A* to 108*G*.—New section 108A is intended to meet the cases of "take-over bids" by groups or combines. Such take-overs are apt to adversely affect the interest of non-controlling shareholders, particularly public financial institutions who are kept in the dark while secret negotiations are entered into with those having control of a company. The former are deprived of the opportunity of having any shares in a bargain that may prove profitable and are forced to continue with their shares in the company while management passes into unknown or undesirable hands. Stock Exchanges have complained about the inadequacy of the existing provisions to prevent such anonymous

and clandestine take-overs. Suggestions have been received from other knowledgeable quarters as to the need for urgent action to prevent or regulate such take-overs. It is, therefore, proposed to provide for the requirement of Government approval before completion of any take-over either in one transaction or a series of transactions resulting in the acquisition of shareholding in the aggregate of over twenty-five per cent. by a "group" or combine having the common intention of acquiring control over the company concerned. The proposed restrictions will apply to companies having total paid-up capital of not less than Rs. 25 lakhs and private companies which are subsidiaries of such public companies.

New section 108B provides that every body corporate or bodies corporate, holding whether singly or in the aggregate, ten per cent. or more of the nominal share capital of any company shall intimate to the Government any proposal to transfer such shares. On receiving such intimation, the Central Government is empowered to issue directions regulating the transfer of such shares. In respect of companies operating in the fields covered by Industries enumerated in the Schedule, the Central Government may direct the shares to be transferred to the Central Government or such corporation owned or controlled by that Government as may be specified in the direction. It is also proposed to regulate the terms for acquiring the shares so directed to be transferred and in case of disagreement the same shall be settled by the Court.

By new section 108C the restrictive provisions are made applicable to transfer of shares of foreign bodies corporate having an established place of business in India in cases where holding of shares in ten per cent. or more of the nominal share capital of the foreign company concerned. In this way it is intended to meet the situations which have come to the notice of the Government of companies which incorporated outside India but having substantial business in India changing hands, and funds derived from such transfers being misused for obtaining control over other Indian companies. It is expected that the Government becoming aware of such changes, will be in a position to ensure that they are in public interest.

By section 108D, it is proposed to empower the Central Government to direct companies not to give effect to any transfer of shares if as a result of such transfer, a change in the controlling interest of the company concerned, prejudicial to the interests of the company or public interest, is likely to take place. It is proposed that the power will extend to a restoration of the status *quo ante*.

Apart from the penal provisions contained in the several new sections mentioned, there is section 108E under which some special penal provisions are proposed. The new section 108F specifies that the proposals contained in sections 108A to 108D shall not apply to Government companies, corporations (not being companies) established by or under any Central Act and public financial institutions. The new section 108G defines "equity shares" in the context of the preceding new sections proposed.

Clause 13.—This clause introduces two new sections *viz.* section 187C and section 187D.

By section 187C it is made obligatory that all benami holdings of shares in existence at the commencement of the Amendment Act must be declared both by the benamidar and the beneficial owner and

failure to do so will be punishable. Likewise all beneficial interest in shares in future also to be declared and with a view to check any possible evasion of the proposed legislation, it is provided that the benami holdings of shares must be reported both by the benamidar and the beneficial owner within specified time and failure to do so made punishable. All collateral agreements entered into, or instruments executed in connection with benami holdings which are not so reported cannot be enforced by the beneficial owner or any person claiming through him.

By the new section 187D, a provision for investigation is proposed for the purpose of ensuring compliance with section 187C.

It is expected that the provisions of this clause will be helpful as a check upon any possible evasion of the provisions relating to take-overs.

Clause 14.—This is consequential to the amendment proposed in clause 24 of the Bill.

Clause 15.—The Companies (Amendment) Act, 1969 passed on the 28th May, 1969, abolished the system of management of companies by Managing agents or Secretaries and Treasurers with effect from 3rd April, 1970. Consequent on such abolition, it is noticed that many erstwhile Managing Agents or Secretaries and Treasurers are trying to continue their control over the managed companies by entering into service agreements in various forms like Secretary, Consultant or Advoser or to any other office. It is considered necessary to provide for scrutiny and regulation of such agreements to prevent their continuing control in some guise or form without rendering any real services for the benefit of the company. It is, therefore, proposed to provide that all agreements between the erstwhile Managing Agents, Secretaries and Treasurers or their associates entered into within five years of their ceasing to be Managing Agents or Secretaries and Treasurers shall require approval of the Central Government and shall be subject to such variation as in the opinion of the Central Government is necessary in the interest of the company. This provision is also to have retrospective effect to bring within the purview agreements which are entered into before the commencement of the Amending Act, but continuing in force after the said Amending Act.

Clause 16.—It has been observed that large established companies have been in the practice of declaring dividends even in a year in which profits are not adequate for payment of large dividends, out of reserves accumulated in previous years. Such accumulated reserves which should have been normally available as a plough-back for the furtherance of the company's business are thus used in a manner prejudicial to public interest. It is, therefore, proposed to incorporate in the statute provisions to the effect that declaration of dividend out of reserves could be made only in accordance with the rules to be prescribed by the Central Government or in special cases with the previous approval of the Government. It is also proposed to make it obligatory for companies to transfer the total amount which is to be distributed to shareholders as dividend in any year to a special account to be opened by the company in any Scheduled Bank, within seven days from the date of the declaration. This is intended to prevent companies from declaring dividends when no

profits in the shape of liquid funds are readily available. It has also been observed that very large amounts declared as dividends to shareholders by companies lie unclaimed or undistributed for several years. Hence it is proposed that such amounts lying unpaid for a period of three years should be transferred by the company to the general revenue account of the Central Government. In this way the possibility of the misuse of the money due to shareholders by management is avoided while the Central Government empowered to pay individual claimants as and when the claims are preferred. It is also proposed to make it obligatory to deposit in the general revenue account unclaimed dividends outstanding at the commencement of the amending Act.

Clause 17.—This is consequential to the proposed new section 209A of the Bill (*vide* clause 18).

Clause 18.—A check on the performance of companies is generally exercised by scrutiny of balance sheet and profit and loss account filed by them with the Registrar who is empowered under section 234 of the Act to call for information and explanation with respect to any matter to which such documents purport to relate. The Companies Act, 1956 as originally enacted did not empower the Registrar or any other officer to inspect the books of accounts of companies. This lacuna was filled up by amending section 209(4) of the Companies Act, 1956 by the Amending Act of 1960. However, in terms of section 209(4), as it stands, it is not obligatory for a company to furnish information or explanation which the Registrar or the Inspecting Officer may require in the course of the inspection of the books of accounts of the company. He has no power to compel production of books of account and other papers required by him for inspection. The object of the inspection is not only to keep a watch on the performance of companies but also to evaluate precisely the level of efficiency in the conduct of the affairs of the company concerned. The inspection of the books of account will also enable the Government to ascertain the quantum of profits which have accrued but not adequately accounted for taxation purposes, concealment of income by falsification of accounts, misuse of fiduciary responsibilities by management for personal aggrandizement, misapplication of funds while the industry itself is in a state of perpetual crisis. Such knowledge about the mismanagement of the business of the company with intent to defraud the creditors, shareholders and the revenue, or otherwise for fraudulent or unlawful purposes would enable the Government to take effective emergent remedial measures before the company goes into liquidation and thus not only save the industry or trade, as such, but also prevent distress to the employees and the workers. The role of inspection has to be much wider and have the object of ensuring that transactions have been validly entered into in accordance with the rules and procedures of the company and also ascertaining how far the statutory auditors have discharged their functions and duties in certifying the true and fair view of the company's accounts and their proper maintenance. Therefore, inspection under this section cannot be effective unless the Inspector is given power to compel production of books, and to examine on oath, etc., as an Income-tax Officer has under section 131 of the Income-tax Act. It is now proposed to strengthen the law suitably.

Clause 19.—On the analogy of section 8 of the U.K. Companies Act, 1967, which requires that the report of the Board of directors should

include a list showing the names of employees of the company who are in receipt of emoluments in excess of £10,000 per annum and should also indicate the names of such employees and their relationship, if any, with any of the directors of the company, the clause seeks to make a provision requiring the companies to include such information in the report of the Board of directors to be attached with the balance-sheet and profit and loss account in respect of employees getting remuneration of Rs. 36,000 per annum inclusive of the value of perquisites.

Clauses 20 *and* 21.—Under section 224, there is no restriction on the re-appointment of same auditor continuously for a number of years. This has resulted in concentration of audit in a few established firms of auditors and has tended to create close association between the auditors and a group of companies. It is, therefore, proposed to regulate re-appointment of the same auditors by requiring Government approval for continuance beyond three years. It is also proposed that in the case of a company in which not less than 25 per cent. of the subscribed share capital is held by a public financial institution or a nationalised bank or a general insurance company, the appointment or re-appointment of an auditor shall have no effect unless approved by the Central Government.

Clause 22.—Section 233B was introduced in 1965 empowering the Government to order audit of cost accounts in respect of certain companies for which maintenance of cost accounts was prescribed. This section provides for appointment of cost accountants, or chartered accountants or other persons possessing the prescribed qualifications, to conduct the cost audit. The provision for prescribing qualification for chartered accountants was introduced, as it was felt that there might not be sufficient number of cost accountants to cope with the work. Since the number of companies for which cost audit has been ordered is not too large and the number of practising cost accountants has greatly increased since 1965, it may not be necessary after sometime to prescribe qualifications for chartered accountants and others. Hence it is considered necessary to take power so that if sufficient number of cost acountants are available, the Government may, by notification, specify that cost audit need not be conducted by chartered accountants. Further, the provision enabling the Government to prescribe qualifications for "other persons" could not be used so far, as there is hardly any such category of persons. Hence it is proposed to delete this category as being unnecessary. Since the cost audit reports are not required to be placed before the general meeting and are reports to the Central Government, it is considered that the Board of directors of a company may itself make the appointment of the cost auditors with the approval of the Central Government. The existing law also does not provide for any disqualification of auditor appointed under this section. There is also no specific mention at present as to how the cost audit report should be dealt with. Amendments have been proposed to remove these lacunae and provide for the necessary changes.

Clause 23.—The existing section 269 requires approval of the Central Government for the appointment of managing or whole time directors for the first time. No such approval is, therefore, required for their re-appointment at any time thereafter, provided there is no change in remuneration. Government has no control over these subsequent appointments even though serious irregularities or illegalities may have been

committed by such director except to launch prosecution or apply to the Court for disqualifying him from being appointed as director in any company. This is an unsatisfactory position. It is, therefore, proposed to amend this provision so as to require approval of the Central Government for appointment as well as re-appointment and to take power to grant such approval for a period shorter than five years in appropriate cases. It is also proposed to provide guidelines for the grant or refusal of such approval so as to ensure the exercise of the power fairly and justly.

Clause 24.—It has been noticed that sole selling agents are appointed in respect of goods, the demand for which by the consumers is substantially in excess of the production or supply of such goods. It is felt that in such cases, the goods will have an easy market and the services of sole selling agents may not be necessary to create a market for the same. This avoidable expenditure would result in unnecessary erosion of funds which could be usefully utilised for the business of the company. Hence to avoid diversion of funds it is considered necessary to provide that the Central Government may, by notification, specify commodities in which sole selling agents shall not be appointed. In order to avoid diversion of funds, it is also considered necessary to provide that no individual, firm or body corporate who or which has a substantial interest in a company shall be appointed as a sole selling agent of that company unless such appointment has been previously approved by the Central Government. Further to provide a check on the appointment of sole selling agents and thus prevent unnecessary expenditure, it is proposed that such appointment in companies with paid-up capital of rupees fifty lakhs and above would require the approval of shareholders by special resolution and also of the Central Government. These provisions will apply also to sole buying or purchasing agents as it has been found that company managements misuse for personal gain their power in relation to the purchase of raw materials and other goods.

Clause 25.—A fruitful source of misuse of power by directors is that which is exemplified by contracts entered into with the company of which they are directors by themselves or through their relatives or firms or companies in which they are interested for the sale, purchase or supply of goods, materials or services, as the case may be. Under the existing provisions of the Act, for entering into such contracts, the director concerned has only to disclose his interest in the subject matter of the contract when the contract comes before the Board of directors for sanction. This is not considered sufficient to safeguard the interests of the company, especially when directors are in a position to take advantage of inside information for personal gain. Hence it is proposed to strengthen section 297 of the Act under which the sanction of the Board of directors is required, by further making it obligatory for a company having a paid-up capital of not less than Rs. 25 lakhs to obtain the previous approval of the Central Government for entering into such contracts.

Clause 26.—According to the provisions of section 314, no resolution of the shareholders is necessary for appointment of directors or their relatives, etc., as legal or technical advisers. Instances of improper use of this exemption have been brought to the notice of the Government. Suggestions from various quarters have been made that these exemptions

should be removed so that the shareholders could consider the desirability or otherwise of appointment of directors or their relatives as legal or technical advisers. Similarly it has also been proposed that appointment of any relative of directors to any office or place of profit carrying a total monthly remuneration of Rs. 3,000 or more in the company, shall require not only the approval of the shareholders but also of the Central Government. It has also been noticed that in many cases of unauthorised appointments, the companies have neglected to recover, or have waived the recovery of the amounts paid to the concerned person during the period he held such office. Amendments have been proposed in this section to give effect to the proposals or make good the omissions.

Clauses 27-28.—These are consequential amendments to the introduction of new section 4B (*vide* clause 3 of this Bill).

Clause 29.—In view of the complexities of modern business, and the various laws which the managemnt of a company are required to comply with, reliance upon qualified secretaries is now a common feature of medium-sized and big-sized companies. The U.K. Companies Act contains a provision for the appointment of a secretary for every company. However, such a compulsory provision in the case of small-sized companies may involve a disproportionately heavy burden on them. It is, therefore proposed that every company having a paid-up capital of Rs. 25 lakhs or more shall have a secretary. The existing definition of secretary under which even a body corporate or firm could function as secretary is proposed to be amended to provide that a body corporate or firm may not take up secretarial functions in a company. Besides meeting the requirements of companies, as stated above, this provision will also help the growth of the profession of company secretaries and provide employment opportunities to qualified secretaries. Further, it is also considered necessary to provide that an individual appointed as secretary to any of the companies covered by the proposed new section 383A shall work whole-time as such and cannot accept appointment as a secretary in any other company.

Clause 30.—Section 408 empowers the Central Government to appoint not more than two persons on the Board of a company for a period not exceeding three years for preventing oppression, mismanagement, etc. This provision was inserted originally on the recommendation of the Joint Committee on the Companies Bill, 1953. In practice, however, it has been found in a few cases where this power was exercised that the Government nominated directors have not been able to function effectively, being in a hopeless minority, having regard to the composition of the Board of directors. In order, therefore, to make such appointments more purposeful and effective, it is considered necessary to empower the Central Government to appoint such number of directors in the circumstances of each case as may be required to enable them effectively to discharge their responsibilities in the light of the objectives for which their appointments were made. It is also proposed to empower the Central Government to issue directions to companies where an appointment of director is made under section 408. The directors appointed under section 408 are also required to keep the Government informed about the affairs of the company from time to time.

Clauses 31 *and* 32.—The provisions of the Act have no general application to foreign companies operating in India. Foreign companies are

merely required within 30 days of establishment of a place of business in India to file a few specified documents, *e.g.*, documents relating to their incorporation in the country of origin, document specifying the agent of the company authorised to accept notices and processes on behalf of the company etc. Annually such foreign companies are also required to file the audited accounts with the Registrar. There is no further regulatory provision to check the operations and activities of the foreign companies in India. Some of the foreign companies operating in India are foreign only in name *i.e.* only by virtue of incorporation in a foreign country, but the main business or trade or manufacture is conducted wholly or almost wholly in India. Many representations have been received to extend the regulatory provisions of the Act to foreign companies. It is also proposed that in respect of foreign companies, having an established place of business in India, in which more than 50 per cent. of the share capital is held by Indian citizens or bodies corporate incorporated in India, such other provisions of the Act as may be notified by the Central Government will become applicable to the extent specified in the notification.

Clause 33.—It has come to the notice of the Government that there are a few associations or bodies corporate, incorporated under special statutes which were enacted long ago, prior to the earliest of the Companies Act which preceded the present Companies Act, 1956. Such associations, etc., are outside the discipline of the various provisions of the Companies Act, 1956, including the requirement for filing annual returns and balance, sheets, with the Registrar of companies. It is found that the Government cannot take adequate action on complaints against such bodies corporate as the old statutes do not contain proper remedial provisions. To enable adequate action being taken in such cases under the law, suitable amendment is proposed.

Clause 34.—The principle behind the amendment proposed in this case is the same as given in reference to clause 20 of this Bill.

Clause 35.—The Public Accounts Committee made a suggestion for subjecting companies whereof more than fifty-one per cent. shares are held jointly by Government and Government companies to the financial discipline of the Act as in the case of Government companies. Further, there are instances where more than fifty-one per cent. shares of a company are held by public financial corporations either by themselves or alongwith Government or Government companies. It is considered necessary to empower the Central Government to appoint the auditors on the advice of the Comptroller and Auditor-General of India, for the purposes of audit of such companies' accounts in the same manner as is now adopted for Government companies.

Clause 36.—This clause is intended to make it clear beyond doubt that the Central Government has power to adopt an administrative ceiling within the statutory ceiling fixed by sections 309 and 198 of the Companies Act, 1956 in regard to managerial remuneration. The High Court of Delhi has also suggested an amendment of the Act in case it is intended to give effect to any such administrative ceilings within the statutory ceilings. This amendment has accordingly been proposed.

Clause 37.—This is pursuant to the proposals contained in the proposed new section 108B (clause 10).

Clause 38.—This is connected with the proposed amendment to section 73 of the Companies Act, 1956 (*vide* clause 7 of the Bill). This amendment to the Securities Contracts (Regulation) Act, 1956 is being proposed as the provision deals with procedural matters relating to that Act with regard to the listing of securities to be dealt with on Stock Exchanges.

Clause 39.—This is consequential to the proposed introduction of new section 4B containing a re-definition of the concept of "same management" (clause 3).

FINANCIAL MEMORANDUM

Additional work for the Department of Company Affairs arises from the proposals contained in the Bill, particularly the following:—

(*i*) Those which transfer some of the functions of the High Courts to the Central Government;

(*ii*) Those which require the approval of the Central Government, *e.g.*, the provisions relating to take over of companies, acceptance of deposits by companies from the public, re-appointment of same auditors after three consecutive years, use of reserves for declaration of dividends, re-appointment of managing|whole-time directors, appointment of erstwhile managing agents|secretaries and treasurers to offices in a company, arrangements of sole selling|sole purchasing agencies for companies, appointment of relatives, etc., of directors to posts carrying remuneration of Rs. 3,000 p.m. and above, and contracts of directors with companies.

(*iii*) The number of private companies which will be deemed to be public companies under section 43A of the Companies Act, 1956 will be considerably enhanced by the relevant provisions of the amending Bill and consequently the work connected with the approval of managerial remuneration, inter-corporate loans and investments of companies will also stand considerably enhanced.

(*iv*) The work relating to foreign companies and applications under section 408 will increase considerably with the enhancement of powers for Government under the amending Bill.

(*v*) Certain new provisions relating to benami holdings of shares have been included, the enforcement of which will also call for adequate staff in the Department and its field offices. There are likewise new provisions requiring the opening of dividend account by each company and the transfer of dividends remaining unpaid for three years to the general revenue account of the Central Government and the payment out of the general revenue account to individual shareholders applying for the unpaid dividends. There are also provisions requiring reports of cost audit of companies to be submitted to the Central Government and action to be taken by the Central Government upon reports thus submitted. All this requires additional strengthening of the Department.

2. Provision is required to be made for the purchase of shares of companies by the Central Government as may be decided by the Government in accordance with the provisions contained in proposed new section 108B(2) and (3)—(*vide* clause 10 of the Bill).

3. Recurring and non-recurring expenditure from the Consolidated Fund of India on the requirement of additional officers and staff and the purchase of shares as referred to above is estimated to be Rs. 62 lakhs as per details below:—

1. Recurring expenditure on account of pay and allowances, etc.	Rs. 10 lakhs per annum.
2. Non-recurring expenditure	Rs. 2 lakhs.
3. Lump-sum provision for purchase of shares	Rs. 50 lakhs per annum.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3 authorises the Central Government to notify such other institution as it may think fit as a "public financial institution" within the meaning of the section provided that the institution fulfils the conditions specified in sub-section (2) of proposed new section 4A.

Clause 6 authorises the Central Government to prescribe in consultation with Reserve Bank the limits up to which, the manner in which and the conditions subject to which, deposits may be invited or accepted by a company whether from the public or from its members, and also to prescribe the form in which a company must issue an advertisement in relation to acceptance by it of deposits. The clause further authorises the Central Government to specify in consultation with Reserve Bank the companies to which provisions of the section shall not apply and also the amounts which shall not be treated as "deposits" within the meaning of the section.

Clause 16 [sub-section (3) of proposed new section 205A] authorises the Central Government to make rules to regulate declaration of dividends by a company out of the accumulated profits earned by the company in previous years and transferred by it to reserves. It also authorises the Central Government to prescribe the form in which a company should furnish a statement to an officer of the Central Government while transferring unclaimed or unpaid dividends to the general revenue account of the Central Government [sub-section (7) of proposed new section 205A].

Clause 22 authorises the Central Government to direct by a notification that as from such date as may be specified by it no Chartered Accountant shall conduct the cost audit of any company if it is of the opinion that sufficient number of cost auditors in practice have become available for the audit of the cost accounts of companies (section 233B).

Clause 24 authorises the Central Government to specify the categories of goods the demand for which, in its opinion, substantially exceeds their production and supply and to prohibit by notification the appointment of sole selling agents for sale of such goods [sub-section (1) of proposed new section 294AA]. It also empowers the Central Government to prescribe the particulars which companies with a paid-up capital of Rs. 50 lakhs or above shall furnish in the applications to the Central Government for seeking approval to the appointment of sole selling agents [sub-section (5) of proposed new section 294AA].

Clause 31 [sub-section (2) of section 591] authorises the Central Government to prescribe the provisions of the Companies Act with which a company incorporated outside India and having a place of business in India must comply, in relation to the business carried on by it in India, if fifty per cent. or more of its paid-up capital is held by Indian citizens and/or companies registered in India.

Clause 33 (section 616) authorises the Central Government to make the provisions of the Companies Act applicable, with such exceptions,

modifications or adaptations as may be specified, to such body corporate, incorporated by any Act for the time being in force, as may be notified by it in the Official Gazette.

Clauses 2(*vii*), 10, 13, 19, 20 and 29 contain *inter alia* provisions authorising the Central Government to prescribe the following:—

(*a*) qualifications which an individual must possess to be eligible for appointment as a company secretary [clause 2(*vii*)];

(*b*) the particulars which every body corporate under the same management shall include in the intimation to be given to the Central Government regarding proposed transfer of shares [sub-section (*1*) of proposed new section 108B];

(*c*) the forms for the declarations envisaged in sub-sections (*1*), (*2*) and (*3*) of the proposed new section 187C and the form for the return to be filed as envisaged in sub-section (*4*);

(*d*) the further particulars which a company shall indicate in the statement, to be included with the Board's report, regarding employees in receipt of an annual remuneration of Rs. 36,000 or more [proposed new sub-section (*2A*) of section 217];

(*e*) the form in which application is to be made to the Central Government for prior approval to the appointment of the same auditor after the third consecutive term [section 224(*1B*)]; and

(*f*) the qualifications of whole-time secretary which every company having a paid-up capital of not less than twenty-five lakhs of rupees must employ (proposed new section 383A).

The aforesaid requirements are matters of administrative detail and it is hardly possible to provide for them in the Act itself. The delegation of legislative power is, therefore, of a normal character.

S. L. SHAKDHER,
Secretary.

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